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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/796,249	03/09/2004	Shane S. Owara	112056-0167

24267
 CESARI AND MCKENNA, LLP
 88 BLACK FALCON AVENUE
 BOSTON, MA 02210



CONFIRMATION NO. 2387

FORMALITIES LETTER



OC000000012817173

Date Mailed: 06/01/2004

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

07/26/2004 BABRAHA1 00000033 10796249

FILED UNDER 37 CFR 1.53(b)

01 FC:1051

130.00 OP

*Filing Date Granted***Items Required To Avoid Abandonment:**

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

The following item(s) appear to have been **omitted** from the application:

- Figure(s) 3-5 described in the specification.

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit **must** be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date **must** be filed within **TWO MONTHS** of the date of this Notice.

Applicant is advised that generally the filing fee required for an application is the filing fee in effect on the filing date accorded the application and that payment of the requisite basic filing fee on a date later than the filing date of the application requires payment of a surcharge (37 CFR 1.16(e)). To avoid processing delays and payment of a surcharge, applicant should submit any balance due for the requisite filing fee based on the later filing date being requested when submitting the omitted items(s) and the petition (and petition fee) requesting the later filing date.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b)**. In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabeled drawing figures, is required. A copy of the drawing figures showing the proposed changes in red ink should accompany with any drawing changes. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

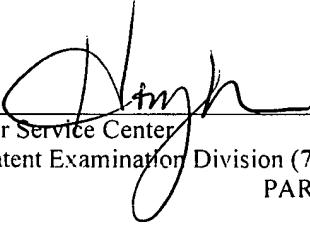
SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$130** for a Large Entity

- **\$130** Late oath or declaration Surcharge.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*


Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE



PATENTS
112056-0167
P01-1728

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Application of:)
Shane S. Owara et al.)
Serial No.: 10/796,249)
Filed: March 9, 2004)
For: SYSTEM AND METHOD FOR IN-)
DEXING A BACKUP USING PER-)
SISTENT CONSISTENCY POINT)
IMAGES)
Cesari and McKenna, LLP
88 Black Falcon Avenue
Boston, MA 02210
July 22, 2004

“Express Mail” Mailing-Label Number: EV 335589489 US

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO NOTICE TO FILE MISSING PARTS OF APPLICATION

Enclosed in response to the Notice to File Missing Parts of Application-Filing Date Granted mailed June 1, 2004, is a Declaration and Power of Attorney for Patent Application and as well as an Assignment executed by the inventors, along with a check for \$40 to cover the filing fee and another check for \$130 to cover the surcharge for this Re-

PATENTS
112056-0167
P01-1728

sponse. The above-referenced application filed in the Patent and Trademark Office is the application that the inventors executed by signing the enclosed Declaration.

Applicant also provides a Preliminary Amendment that addresses the apparent omission of Figs. 3, 4 and 5 in the original filing of the application. Applicant believes it is entitled to the original filing date absent these figures and, because these figures were exactly provided in a related patent application, which was incorporated by reference, applicant now hereby incorporates those figures into the present application.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,



William A. Loginov
Reg. No. 34,863
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500



PATENTS
112056-0167
P01-1728

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Application of:)
Shane S. Owara et al.)
)
Serial No.: 10/796,249) Examiner: Not Yet Assigned
)
Filed: March 9, 2004) Art Unit: 2171
)
For: SYSTEM AND METHOD FOR IN-)
DEXING A BACKUP USING PER-)
SISTENT CONSISTENCY POINT)
IMAGES)
)
Cesari and McKenna, LLP
88 Black Falcon Avenue
Boston, MA 02210
July 22, 2004

EXPRESS-MAIL DEPOSIT

“Express Mail” Mailing-Label Number: EV 335589489 US

The following papers are being deposited with the United States Postal Service
“Express Mail Post Office to Addressee” service pursuant to 37 C.F.R. §1.10:

Power of Attorney
 Fee Transmittal Letter

Check No. _____ for \$130

Check No. _____ for \$40

Return Receipt Postcard

Oath or Declaration
 Assignment With Recordation Form
Cover Sheet
 Response to Notice to File Missing
Parts of Application
 Preliminary Amendment with added
drawings and supporting incorporated-by-
reference US Patent Application



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

Applicant Claims Small Entity Status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT **(\$)** **170**

Complete if Known

Application Number	10/796,249
Filing Date	March 9, 2004
First Named Inventor	Shane S. Owara et al.
Examiner Name	Not Yet Assigned
Group Art Unit	2171
Attorney Docket No.	112056-0167

METHOD OF PAYMENT (check all that apply)

Check Credit Card Money Other None
 Deposit Account Order

Deposit Account **03-1237**
 Number
 Deposit Account **Cesari and McKenna, LLP**
 Name

The Commissioner is authorized to: (check all that apply)
 Charge any deficiency or
 Charge fee indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	750	2001	375	Utility filing fee	
1002	330	2002	165	Design filing fee	
1003	520	2003	260	Plant filing fee	
1004	750	2004	375	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)		(\$)			0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Fee from Claims below	Fee Paid
Total Claims		$20^{**} = 0 \times 0 = 0$	
Independent Claims		$3^{**} = 0 \times 0 = 0$	
Multiple Dependent			

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	84	2201	42	Independent claims in excess of 3
1203	280	2203	140	Multiple dependent claim, if not paid
1204	84	2204	42	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)		(\$)		0

**or number previously paid, if greater; For Reissues, see below*

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	130
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English Specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility Issue fee (or reissue)	
1502	470	2502	235	Design Issue fee	
1503	630	2503	315	Plant Issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	40
1809	750	2809	375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37 CFR 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify)		SUBTOTAL (3)			
Other fee (specify)		(\$)		170	

*Reduced by Basic Filing Fee Paid

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	William A. Loginov	Registration No. (Attorney/Agent)	34,863	Telephone	(617) 951-2500
Signature				Date	July 22, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038. This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS